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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,086	10/29/2001	Nathaniel T. Becker	GC644-3	8483

5100 7590 01/12/2005

GENENCOR INTERNATIONAL, INC.  
ATTENTION: LEGAL DEPARTMENT  
925 PAGE MILL ROAD  
PALO ALTO, CA 94304

EXAMINER
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KUMAR, PREETI

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/033,086

Applicant(s)

BECKER ET AL.

Examiner

Preeti Kumar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,6,7,9-19 and 34-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,7,9-19 and 34-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Final Rejection***

***Response to Amendment***

1. Claims 1,2,6,7,9-19,28,30-32 and 34-42 are pending.
2. The objection to claim 8 is withdrawn in light of applicant's cancellation of the claim.
3. The rejection of claims 1,2,6,7,9-19,28,30-32 and 34-42 under 35 U.S.C. 103(a) as obvious over Herrmann et al. (US 6,248,706) is maintained for the reasons recited in the previous office actions and further explained below.
4. The rejection of claims 1,2,6,7,9-19,28,30-32 and 34-42 under 35 U.S.C. 103(a) as being unpatentable over a research disclosure by Novo Nordisk (RD 35346 A) dated September 1993 is maintained for the reasons recited in the previous office action and further explained below.
5. The objection to the specification is maintained because of the reasons recited in the previous office action. Specifically, the incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

6. The rejection of claim 28 under 35 U.S.C. 112, second paragraph, is maintained for the reason recited in the previous office action. Specifically claim 28 provides for the use of a particle in compositions, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

7. The rejection of claim 28 under 35 U.S.C. 101 is maintained because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Response to Arguments***

8. Applicant's arguments filed October 19, 2004 have been fully considered but they are not persuasive.

9. Applicant's urge that Herrmann et al do not provide a suggestion to combine an oxidoreductase at a concentration of about 10 to 350 U/g of particle with an active agent in the presence of a bleaching compound.

Herrmann et al. teach an activity-stable and low-dust enzyme granulate for washing and cleaning applications, e.g. for use in granular washing and cleaning agent compositions. See abstract. Herrmann et al. teach a method for preparation of an enzyme granulate for washing and cleaning applications comprising 0.1 to 25 parts by

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weight enzyme or enzyme mixture (calculated as dry substance content of the enzyme preparation that is used), 75 to 99.9 parts by weight (including moisture content) of an organic flour type with a degree of grinding of 30 to 100%, and where the parts by weight of the enzyme or enzyme mixture and of the flour type add up to 100 parts by weight. See col.2, ln.19-67. Furthermore, Herrmann et al. clearly state that the enzyme granulate may be coated with a coating containing an additional enzyme. See col.6, ln.28-35.

Specifically regarding claims 2 and 6, Herrmann et al. teach that the enzyme granulates contain a cellulase, lipase, catalase, oxidase, peroxidase, thermostable .alpha.-amylase or a protease. See col.8, ln.20-25. Please see col.7, ln.1-11, where Herrmann et al. teach that the enzyme or enzyme mixture can be a hydrolase, oxidase or reductase or a mixture thereof.

Specifically regarding claims 6-7, Herrmann et al. teach that the enzyme granulate can be fed to a high-speed mixer and after drying the enzyme granulate can additionally be coated in a customary way with a varnish or film or other protective coating. The coating or varnish can contain an additional enzyme or, alternatively can serve to color the granulate or for protection of the enzyme. See col.6, ln.8-45.

Specifically regarding claims 15-18, Herrmann et al. teach catalase enzymes are very practical enzymes for use in formulating an enzyme granulate for washing and cleaning and the genus *Aspergillus*, can be used for preparation of the enzyme or enzyme mixtures; other sources for appropriate enzymes are Ascomycetes, Streptomycetes, Humicola, or Micrococcus. See col.7, ln.10-30.

The prior art does not teach the specific concentration of the reductase catalase in baker units as recited by the instant claims.

However, Herrmann et al. provide motivation to modify the concentration of the enzyme that is used in the preparation of the enzyme granulate, dependent on the individual specific enzyme activity and the desired final activity of the enzyme granulate. See col.7, ln.15-20. Thus, it would have been obvious, to one of ordinary skill in the art, to modify the specific concentration of the hydrogen-peroxide:hydrogen-peroxide-reductase (catalase) to encompass the broad range of concentrations as recited by the instant claims because Herrmann et al. provide motivation to modify the concentration of the enzyme.

Also, Herrmann et al. teach the advantageous benefits of using an enzyme-flour mixture core over the use of seed cores. Specifically, Herrmann et al. recite the advantage of using a granulate core of enzyme and flour type mixture to avoid the extrusion methods and structural varnishing on seed cores. This is not a teaching away from using seed cores. One of ordinary skill in the art would have been apprised of the knowledge to utilize seed cores or enzyme flour mixtures in a method of formulating an enzyme granulate. Regarding Applicant's argument that the substitution of a seed core would not result in a core material made of an enzyme solution mixed with and distributed throughout a finely ground flour, the material limitations of the instant claims do not recite that an enzyme be distributed through the seed core.

In response to applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., the combination of an oxidoreductase and an active agent in the presence of a bleaching compound) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Finally applicant's urge that RD 35346A to Novo Nordisk does not teach a catalase encompassed by the material limitations and does not teach enzyme combinations. Contrary to applicants arguments, the RD 35346A disclosure, teaches a method for producing an enzyme containing particle with a core and an enzyme containing shell. The core materials include sucrose, kaolin, potato starch. The enzymes may be selected from proteases, amylases, and lipases. See RD 35346 first paragraph. In paragraph 3, RD 35346 discloses the advantageous utility of catalase from *Aspergillus niger*. Also, in paragraph 2, the utility of peroxidase in the enzyme core is also disclosed. The disclosure RD 35346 illustrates an example where 780 g of catalase concentrate with a dry matter content of 14.3% is sprayed onto the surface of the sucrose core material to formulate an active, stable enzyme granulate. See paragraph 4.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

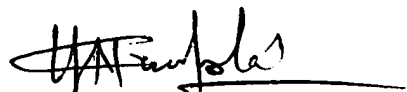
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

Preeti Kumar  
Examiner  
Art Unit 1751

PK